

## **REMARKS**

### **Status of the Claims**

Claims 3-7, 9, 10, 20, 22, 45, 50-52, 54-60, 82, 83, 85, 87, 88, 90, 96, 98, 114, 115, 117, 118, 120, 121, 123-126, 128-130, and 132-142 will be pending in the present application following entry of the present amendment. Claim 86 has been cancelled without prejudice to or disclaimer of the subject matter contained therein. Claims 6, 20, 22, 117, 120, and 123 have been amended as described elsewhere herein. No new matter has been added by way of amendment. The Examiner is respectfully requested to withdraw the rejections and allow claims 3-7, 9, 10, 20, 22, 45, 50-52, 54-60, 82, 83, 85, 87, 88, 90, 96, 98, 114, 115, 117, 118, 120, 121, 123-126, 128-130, and 132-142. In any event, the Examiner is requested to enter the above amendments for the purposes of further prosecution. These amendments were not made earlier because Applicants earnestly believe that the specification is enabling for the breadth of the claims as originally drafted.

### **The Rejection under 35 USC §102(b) or 35 USC § 103(a) Should be Withdrawn**

Claims 3-7, 9-10, 20, 22, 45, 50-52, 54-60, 82-83, 85-88, 90, 96, 98, 114-115, 117-118, 120-121, 123-126, 128-130, 132, and 133-142 have been rejected under 35 U.S.C. §102(b) as being anticipated by, or in the alternative, under 35 U.S.C. §103(a) as obvious over PCT Publication No. WO 2001/009350 (Berthet *et al.*). Applicants respectfully traverse this rejection as applied to the amended claims for the reasons described below.

Claims 117, 120, and 123 (from which all the other claims depend) are directed to immunogenic compositions comprising at least 3 different antigens selected from at least 3 different categories of Neisserial antigens. These listings of antigens in these claims has now been amended such that there is no overlap between the antigens listed for each functional class, thereby clarifying that the claims only encompass immunogenic compositions comprising three ***different*** antigens.

The Examiner continues to argue that claim 15 of the Berthet *et al.* reference anticipates the claims of the present application. This claim teaches a bleb preparation having one or more upregulated genes selected from a list of 21 antigens. Thus, the reference encompasses 7980 possible combinations containing three different antigens as previously noted. In contrast, the present claims encompass compositions

comprising three different antigens where each antigen is selected from a particular functional class of antigens. Thus the compositions encompassed by the present claims are limited to specific antigen combinations. It is the specificity and particularity of the antigen combinations recited in the present claims, rather than the number of possible antigen combinations, that distinguish these compositions from the compositions taught by the Berthet *et al.* reference. Accordingly, because the Berthet *et al.* reference teaches a large genus of possible antigen combinations but does not list the specific combinations of 3 different antigens selected from 3 specified antigen classes as recited in claims 117, 120, and 123, this reference does anticipate the subject matter of these claims or their respective dependent claims.

Furthermore, claims 3-7, 9, 10, 17, 20, 22, 45, 50-52, 54-60, 82-83, 85-90, 96, 98, 114, 115, 117, 118, 120, 121, 123-126, 128-130, and 132-142 are not obvious in view of the Berthet *et al.* reference because this reference provides no suggestion or rationale to combine three different antigens from the three classes recited in claims 117, 120, and 123 to form an immunogenic composition, and the Examiner has not supplemented the teachings of the Berthet *et al.* reference with such a rationale. Thus, it is the present application, rather than the Berthet *et al.* reference, that demonstrates the advantage of immunogenic compositions comprising 3 different antigens from the specified antigen classes. See Example 20 of the present application.

In view of the above amendments and arguments, all grounds for rejection under 35 USC §102 or 35 USC §103(a) have been obviated or overcome. Reconsideration and withdrawal of the rejections are therefore respectfully requested.

#### The Double Patenting Rejections Should be Withdrawn

Claims 3-7, 9-10, 20, 22, 45, 50-52, 54-60, 82-83, 85-88, 90, 96, 98, 114-115, 117-118, 120-121, 123-126, 128-130, and 132-142 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-57 and 60-71 of copending Application No. 10/523,114 and over claims 1-8, 14-20, 53, and 59-60 of copending Application No. 10/523,044. Applicants will address the rejection at such time as the claims of Application Nos. 10/523,114 and/or 10/523,044 are deemed allowable and the rejection of the present application becomes non-provisional.

**CONCLUSION**

It is believed that the current application is now in condition for allowance. Early notice to this effect is solicited. If, in the opinion of the Examiner, an interview would expedite prosecution, the Examiner is invited to call the undersigned, who may be reached at (919) 483-1467.

Respectfully submitted,

/Kathryn L. Coulter/

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Kathryn L. Coulter  
Attorney for Applicants  
Reg. No. 45,889

Date: 8/9/2010  
Customer No. 23347  
GlaxoSmithKline  
Global Patents  
Five Moore Drive, P.O. Box 13398  
Research Triangle Park, NC 27709  
Telephone: (919) 483-1467  
Facsimile: (919) 483-7988